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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 TED SPICE,

12 Plaintiff,

13 v.

14 INTERNAL REVENUE SERVICE, et. al.,

15 Defendants.

CASE NO. 20-5005 RJB

ORDER ON MOTION TO DISMISS

16 This matter comes before the Court on Defendant Bryan Bartelson's Motion to Dismiss.
17 Dkt. 14. The Court has considered the pleadings filed in support of and in opposition to the
18 motion and the file herein.

19 This dispute involves several properties the Plaintiff asserts were owned by himself
20 and/or by him and Doris Mathews, who died in 2009. Dkt. 1. The personal representative of the
21 Estate of Doris Mathews, Donna DuBois, and the Plaintiff have been engaged in protracted
22 litigation in both the state courts and in U.S. Bankruptcy Court (when Donna DuBois declared
23 bankruptcy). *Id.* A purchaser of one of the properties, commonly known as 11003 58th St. Ct. E.
24 Puyallup WA, ("11003 property"), Defendant Bryan Bartelson, now moves for dismissal of the

1 claims against him, with prejudice, for failure to state a claim. Dkt. 14. For the reasons provided
2 below, the motion (Dkt 14) should be granted, in part, and the claims against him dismissed
3 without prejudice.

4 **I. FACTS AND PROCEDURAL HISTORY**

5 **A. FACTS**

6 The Complaint asserts various actions by the Defendants and seldom mentions Bartelson.
7 Dkt. 1. As it relates to Defendant Bartelson or the 11003 property, the Complaint asserts that in
8 November of 2014, Donna Dubois, as the personal representative of the Estate, conveyed the
9 property to herself personally in contempt of two court orders. Dkt. 1, at 3. The Plaintiff asserts
10 that by order of the Pierce County Superior Court, those transfers were vacated. *Id.* The
11 Plaintiff maintains that soon after that order, on March 18, 2015, Ms. Dubois again recorded
12 additional quit claim deeds (including one to the 11003 property) conveying her personal interest
13 in the properties back to herself as personal representative of the Estate, against court orders. *Id.*
14 The Plaintiff maintains that he discovered these “fraudulent title transfers” in February of 2017.
15 *Id.*, at 4-5. The Plaintiff asserts that he filed claims against the Estate, Ms. Dubois and others in
16 state court related to those transfers and the state superior court dismissed those claims on
17 summary judgment. *Id.*

18 According to the Complaint, on July 30, 2019, by motion of the Trustee of Donna
19 DuBois’s bankruptcy estate, Trustee Brian Budsberg, the Bankruptcy Court for the Western
20 District of Washington entered an Order Granting Trustee’s Motion to Approve the Sale of the
21 Estate’s and Co-Owner Ted Spice’s Interest in the Property Located at 11003 58th St. Ct. E. Free
22 and Clear of Liens Pursuant to 11 U.S.C. § 363. Dkt. 1, at 4; *In re DuBois*, Western District of
23 Washington Bankruptcy Case number 13-46104-BDL Dkt. 560. The Complaint alleges that “the
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1 conveyed 11003 property was a fraudulently conveyed asset subject to Spice's Creditor's
2 Claims, Liens and Lis Pendins [sic] to Bryan Bartelson for \$1,000,000 with 'no conditions – as
3 is.'" Dkt. 1, at 4. It claims that "[t]he July 30, 2019 sale of the 11003 property to Bartelson was
4 transacted in bad faith, less than arms transaction, as Spice had pending superior court judgments
5 and [Court of Appeals] litigation regarding Bartelson." *Id.*, at 5-6. The Complaint again states
6 that "the 11003 property was sold for \$1,000,000 to Bryan Bartelson owner 5502 LLC and
7 Milwaukee Ave., LLC on July 31, 2009 by the Bankruptcy Court's June 10, 2019 Order." *Id.*, at
8 12.

9 After the Bankruptcy Court issued the July 30, 2019 Order, on October 15, 2019, the
10 Washington State Court of Appeals, Division II issued a decision and held, in part, that the trial
11 court improperly granted the Estate's motion for summary judgment related to Spice's (Plaintiff
12 here) claims regarding fraudulent transfer of the 11003 property. *Spice v. Estate of Doris*
13 *Mathews, et al.*, Washington Court of Appeals Division II case number 50915-6-II; filed in the
14 record at Dkt. 1-3.

15 After the 11003 property was sold to Defendant Bartelson, the Complaint notes that
16 Trustee Budsberg filed an interpleader action in this Court, *Budsberg v. Spice, et. al.*, Western
17 District of Washington case number 19-5772-RJB, and deposited the proceeds of this sale into
18 this Court's registry. *Id.*

19 In the Complaint in this case, the Plaintiff seeks declaratory relief and damages against
20 Trustee Budsberg and others but does not mention seeking relief against Defendant Bartelson.

21 In response to the Motion to Dismiss, the Plaintiff filed a proposed amended complaint.
22 (He does not move to amend the complaint, but states that he intends to do so soon). In addition
23 to the above allegations, as it arguably relates to the 11003 property and/or it Bartelson, the
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1 proposed amended complaint seeks a declaration that title to the “Collective Properties”
2 (although it is unclear whether the 11003 property is included) is vested in Plaintiff. Dkt. 18-1,
3 at 18.

4 **B. PENDING MOTION**

5 In the pending motion, Bartelson moves for dismissal of the case against him with
6 prejudice. Dkt. 14. He asserts that the Plaintiff fails to state a claim against him. *Id.*
7 The Plaintiff responds, asserts that he has stated a claim, and maintains that his proposed
8 amended complaint also makes claims against Bartelson. Dkt. 18. The Plaintiff objects to
9 Bartelson’s use of the phrase that he owns 11003 “in fee simple” as reference to evidence outside
10 the complaint. *Id.* While the Plaintiff states he intends to file a motion for leave to amend the
11 complaint, he does not do so in this response, and states that he intends to do so soon. *Id.*

12 Defendant Bartelson has replied and asserts his motion should be granted. Dkt. 19. The
13 motion is ripe for review.

14 **II. DISCUSSION**

15 **A. CONSIDERATION OF OUTSIDE ASSERTIONS**

16 For purposes of this motion, the Court will disregard any assertions about whether
17 Bartelson now owns the 11003 property in fee simple.

18 **B. STANDARD FOR MOTION TO DISMISS**

19 Fed. R. Civ. P. 12(b) motions to dismiss may be based on either the lack of a cognizable
20 legal theory or the absence of sufficient facts alleged under a cognizable legal theory. *Balistreri*
21 *v. Pacifica Police Department*, 901 F.2d 696, 699 (9th Cir. 1990). Material allegations are taken
22 as admitted and the complaint is construed in the plaintiff’s favor. *Keniston v. Roberts*, 717 F.2d
23 1295 (9th Cir. 1983). “While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not
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1 need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement
2 to relief requires more than labels and conclusions, and a formulaic recitation of the elements of
3 a cause of action will not do.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 554-55 (2007)
4 (internal citations omitted). “Factual allegations must be enough to raise a right to relief above
5 the speculative level, on the assumption that all the allegations in the complaint are true (even if
6 doubtful in fact).” *Id.* at 555. The complaint must allege “enough facts to state a claim to relief
7 that is plausible on its face.” *Id.* at 547.

8 **C. MOTION TO DISMISS**

9 Defendant Bartelson’s motion to dismiss (Dkt. 14) should be granted and the case
10 dismissed against him without prejudice. The Plaintiff fails to plead any facts against Bartelson
11 in either his complaint or proposed amended complaint that would entitle Plaintiff to relief. The
12 Complaint states that Bartelson purchased the property on order by the U.S. Bankruptcy Court.
13 While it references “fraud,” “bad faith,” and “less than arms transaction,” neither the Complaint
14 nor the proposed amended complaint assert a single fact to support these claims. It is not
15 inconceivable that the Plaintiff could properly plead a claim against Bartelson, but in the first
16 two attempts, the Plaintiff has not done so. Accordingly, the dismissal should be without
17 prejudice.

18 **III. ORDER**

19 Therefore, it is hereby **ORDERED** that:

- 20 • Defendant Bryan Bartelson’s Motion to Dismiss (Dkt. 14) **IS GRANTED, IN**
21 **PART**; and
 - 22 • The claims asserted against him **ARE DISMISSED WITHOUT PREJUDICE**.
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1 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
2 to any party appearing *pro se* at said party's last known address.

3 Dated this 16th day of March, 2020.

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5 ROBERT J. BRYAN
6 United States District Judge
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